UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

ANHEUSER-BUSCH, INC.,)
Plaintiff,)
v.)) No. 4:10CV01296 AGF)
AFA DISPENSING GROUP B.V., and DISPENSING TECHNOLOGIES B.V.,)))
Defendants.)

TEMPORARY RESTRAINING ORDER

This matter is before the Court on Plaintiff's motion for a temporary restraining order ("TRO") (Doc. #11.) A hearing was held on July 27, 2010, at 10:00 a.m., at which Plaintiff appeared. Defendants, who dispute having been properly served, did not appear.

The Court finds that Plaintiff has satisfied the requirements of Federal Rule of Civil Procedure 65(b)(1) with regard to notice to Defendants of the motion for a TRO and supporting documents, and of the hearing set by the Court. Defendants have, in fact, received actual notice of the motion for a TRO, and Matthew Sava, an attorney in New York, NY, who has represented to the Court that he is counsel for both Defendants, has stated that Defendants have declined to participate, contesting the Court's personal jurisdiction over them. The Court accepted receipt of an email letter addressed to Plaintiff's counsel on this day by Mr. Sava, setting forth the position of Defendant AFA

Dispensing Group B.V. on the appropriateness of the requested TRO.

The Court further finds that if an ex parte TRO is not issued, immediate and irreparable injury, loss, or damage may result to Plaintiff before Defendants can be heard in opposition. This injury consists of, but may not be limited to, the disclosure of confidential information as defined in the Confidentiality Agreement between the parties, dated December 9, 2009 (Doc. #13-11), and incorporated into the Supply Agreement between the parties, dated December 18, 2009 (Doc. #13-1). The threatened injury to Plaintiff also includes competition by Defendants, in breach of Section 1(k) of the Supply Agreement. Pursuant to the Supply Agreement and the Confidentiality Agreement, the obligations of Defendants (i) not to compete in violation of Section 1(k) and (ii) not to disclose confidential information appear to survive the termination of the Supply Agreement and the Confidentiality Agreement.

The Court finds that the remaining relevant factors, as set forth in <u>Dataphase Sys.</u>, <u>Inc. v. C L Sys.</u>, <u>Inc.</u>, 640 F.2d 109, 113 (8th Cir. 1981) (en banc), weigh in favor of issuing a TRO. A TRO is necessary and proper in light of the balance between the harm Plaintiff would suffer absent the TRO, and the injury that granting the TRO may inflict on Defendants, as well as the likelihood of Plaintiff's success on the merits.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion for a TRO (Doc. #11) is GRANTED, to remain in effect until further order of the Court, not to exceed 14 days. Defendants are enjoined from disclosing and using any "confidential information,"

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pursuant to the terms of the Supply Agreement and Confidentiality Agreement, except for

use in this or any other litigation or arbitration between the parties, or as may be ordered

by any court.

Defendants are further enjoined from directly or indirectly developing, or assisting

in the development of, or manufacturing, or causing, licensing, or otherwise permitting to

be manufactured, the Product which is intended for use or sale in the Territory, as such

terms are defined in the Supply Agreement, and as further set forth in Section 1(k) of the

Supply Agreement.

IT IS HEREBY ORDERED that Plaintiff shall cause a copy of this Order to be

communicated immediately to Defendants, and shall proceed with all due speed to obtain

service on Defendants in accordance with Federal Rule of Civil Procedure 4.

IT IS FURTHER ORDERED that a bond, or a deposit in lieu of a bond, in the

amount of \$75,000 shall be posted by Plaintiff no later than July 28, 2010, at 5:00 p.m.

IT IS FURTHER ORDERED that a hearing is set on Plaintiff's motion for a

preliminary injunction on August 6, 2010, at 9:00 a.m.

AUDREY G. FLEIŚSIG

UNITED STATES DISTRICT JUDGE

Dated this 27th day of July, 2010, at /: 44 p.m.

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